

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21550 Oxnard St., Suite 780
Woodland Hills, CA 91367
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@toddflaw.com
abacon@toddflaw.com
mgeorge@toddflaw.com
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MIGUEL NAPOLES, individually and) Case No.
on behalf of all others similarly situated,) _____

) CLASS ACTION

Plaintiff,

) **COMPLAINT FOR VIOLATIONS**
vs.) **OF:**

）

DENT-A-MED INC. dba HC) 1. NEGLIGENT VIOLATIONS
PROCESSING; and DOES 1-10,) OF THE TELEPHONE
inclusive,) CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]

Defendant

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]

2. **SEQ.]**
WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]

3. VIOLATIONS OF THE
ROSENTHAL FAIR DEBT
COLLECTION PRACTICES
ACT [CAL. CIV. CODE
§1788 ET SEQ.]

) DEMAND FOR JURY TRIAL

Plaintiff MIGUEL NAPOLES (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following against Defendant DENT-A-MED

1 INC. dba HC PROCESSING upon information and belief based upon personal
2 knowledge:

3 **INTRODUCTION**

4 1. Plaintiff's Class Action Complaint is brought pursuant to the
5 Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. ("TCPA").

6 2. Plaintiff, individually, and on behalf of all others similarly situated,
7 brings this Complaint for damages, injunctive relief, and any other available legal
8 or equitable remedies, resulting from the illegal actions of Defendant in
9 negligently, knowingly, and/or willfully contacting Plaintiff no Plaintiff's cellular
10 telephone, thereby the TCPA, 47 U.S.C. § 227. Plaintiff alleges as follows upon
11 personal knowledge as to herself and her own acts and experiences, and, as to all
12 other matters, upon information and belief, including investigation conducted by
13 his attorneys.

14 3. In addition to Plaintiff's Class Claims, Plaintiff also brings an action
15 for damages as an individual consumer for Defendant's violations the Rosenthal
16 Fair Debt Collection Practices Act, Cal Civ. Code §1788, et seq. (hereinafter
17 "RFDCPA") which prohibits debt collectors from engaging in abusive, deceptive,
18 and unfair practices.

20 **JURISDICTION AND VENUE**

21 4. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
22 a resident of California, seeks relief on behalf of a Class, which will result in at
23 least one class member belonging to a different state than that of Defendant, a
24 Arkansas company that does business in California and other States. Plaintiff also
25 seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which,
26 when aggregated among a proposed class in the thousands, exceeds the
27 \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity
28 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005

1 (“CAFA”) are present, and this Court has jurisdiction.

2 5. Alternatively, this Court has jurisdiction over Plaintiff’s TCPA claims
3 pursuant to 28 U.S.C. § 1331.

4 6. Ancillary to Plaintiff’s TCPA claims, this Court has jurisdiction
5 pursuant to 28 U.S.C. § 1367(a) over Plaintiff’s claims arising under the RFDCPA,
6 Cal. Civ. Code § 1788, *et seq.* because they arise under the same case or
7 controversy.

8 7. Venue is proper in the United States District Court for the Central
9 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
10 business within the State of California and Plaintiff resides within this District.

11 **PARTIES**

12 8. Plaintiff, MIGUEL NAPOLES (“Plaintiff”), is a natural person
13 residing in Los Angeles County in the state of California, and is a “person” as
14 defined by 47 U.S.C. § 153(39). Furthermore, Plaintiff is a “debtor” as defined by
15 the RFDCPA, Cal. Civ. Code § 1788.2(h).

16 9. At all relevant times herein, Defendant, DENT-A-MED INC. dba HC
17 PROCESSING (“Defendant”), is dental service company engaged in collection
18 activity in connection with debts allegedly owed to it, and is a “person” as defined
19 by 47 U.S.C. § 153(39). Furthermore, Defendant, at all relevant times herein, was
20 a company engaged, by use of the mails and telephone, in the business of collecting
21 an alleged debt from Plaintiff which qualifies as a “consumer debt” as defined by
22 the RFDCPA, Cal. Civ. Code § 1788.2(f). Defendant regularly attempts to collect
23 debts in the ordinary course of its business, and therefore is a “debt collector” as
24 defined by the RFDCPA, Cal. Civ. Code § 1788.2(c).

10. Defendants acted through their agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

11. The above named Defendant, and its subsidiaries and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

12. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS – TCPA

13. Beginning in or around April of 2017, Defendant contacted Plaintiff on his cellular telephone number ending in -3403, in an effort to collect an alleged debt owed from Plaintiff.

14. Defendant called Plaintiff from telephone numbers confirmed to belong to Defendant, including without limitation (401) 429-0755.

15. In its efforts to collect the alleged debt owed from Plaintiff, Defendant used an “automatic telephone dialing system,” as defined by *47 U.S.C. § 227(a)(1)*

1 to place its daily calls to Plaintiff seeking to collect an alleged debt owed.

2 16. Defendant's calls constituted calls that were not for emergency
3 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

4 17. Defendant's calls were placed to telephone number assigned to a
5 cellular telephone service for which Plaintiff incurs a charge for incoming calls
6 pursuant to *47 U.S.C. § 227(b)(1)*.

7 18. During all relevant times, Defendant did not possess Plaintiff's "prior
8 express consent" to receive calls using an automatic telephone dialing system or an
9 artificial or prerecorded voice on his cellular telephone pursuant to *47 U.S.C. §*
10 *227(b)(1)(A)*.

11 19. Plaintiff alleged upon information and belief that Defendant failed to
12 put in place reasonable policies and procedures to avoid violation of the TCPA.
13

14 **FACTUAL ALLEGATIONS – RFDCPA**

15 20. In addition to the facts pled above, at various times prior to the filing
16 of the instant complaint, including within one year preceding the filing of this
17 complaint, Defendant contacted Plaintiff in an attempt to collect an alleged
18 outstanding debt.

19 21. On or about April of 2017, Plaintiff began receiving numerous calls
20 from Defendant.

21 22. Each of these calls were made to Plaintiff in connection with
22 collection on an alleged debt.

23 23. The RFDCPA, Cal. Civ. Code § 1788.17 mandates that every debt
24 collector collecting or attempting to collect a consumer debt shall comply with the
25 Federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692b
26 through 1692j and be subject to the remedies in the FDCPA, 15 U.S.C. § 1692k.

27 24. DEFENDANT'S conduct violated the RFDCPA in multiple ways,
28

including but not limited to:

- a) Causing a telephone to ring repeatedly or continuously to annoy Plaintiff (Cal. Civ. Code § 1788.11(d));
- b) Communicating, by telephone or in person, with Plaintiff with such frequency as to be unreasonable and to constitute an harassment to Plaintiff under the circumstances (Cal. Civ. Code § 1788.11(e));
- c) Causing Plaintiffs telephone to ring repeatedly or continuously with intent to harass, annoy or abuse Plaintiff (15 U.S.C. § 1692d(5));
- d) Communicating with Plaintiff at times or places which were known or should have been known to be inconvenient for Plaintiff (15 U.S.C. § 1692c(a)(1)); and
- e) Engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff (15 U.S.C. § 1692d)).

25. As a result of the above violations of the RFDCPA, Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal humiliation, embarrassment, mental anguish and emotional distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed class (hereafter "The Class") defined as follows:

All persons within the United States who received any telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

1 27. Plaintiff represents, and is a member of, The Class, consisting of All
2 persons within the United States who received any collection telephone calls from
3 Defendant to said person's cellular telephone made through the use of any
4 automatic telephone dialing system or an artificial or prerecorded voice and such
5 person had not previously not provided their cellular telephone number to
6 Defendant within the four years prior to the filing of this Complaint.

7 28. Defendant, its employees and agents are excluded from The Class.
8 Plaintiff does not know the number of members in The Class, but believes the Class
9 members number in the thousands, if not more. Thus, this matter should be
10 certified as a Class Action to assist in the expeditious litigation of the matter.

11 29. The Class is so numerous that the individual joinder of all of its
12 members is impractical. While the exact number and identities of The Class
13 members are unknown to Plaintiff at this time and can only be ascertained through
14 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
15 The Class includes thousands of members. Plaintiff alleges that The Class
16 members may be ascertained by the records maintained by Defendant.

17 30. Plaintiff and members of The Class were harmed by the acts of
18 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
19 and Class members via their cellular telephones thereby causing Plaintiff and Class
20 members to incur certain charges or reduced telephone time for which Plaintiff and
21 Class members had previously paid by having to retrieve or administer messages
22 left by Defendant during those illegal calls, and invading the privacy of said
23 Plaintiff and Class members.

24 31. Common questions of fact and law exist as to all members of The
25 Class which predominate over any questions affecting only individual members of
26 The Class. These common legal and factual questions, which do not vary between
27 Class members, and which may be determined without reference to the individual
28

1 circumstances of any Class members, include, but are not limited to, the following:

2 a. Whether, within the four years prior to the filing of this
3 Complaint, Defendant made any collection call (other than a
4 call made for emergency purposes or made with the prior
5 express consent of the called party) to a Class member using
6 any automatic telephone dialing system or any artificial or
7 prerecorded voice to any telephone number assigned to a
8 cellular telephone service;

9 b. Whether Plaintiff and the Class members were damages
10 thereby, and the extent of damages for such violation; and

11 c. Whether Defendant should be enjoined from engaging in such
12 conduct in the future.

13 32. As a person that received numerous collection calls from Defendant
14 using an automatic telephone dialing system or an artificial or prerecorded voice,
15 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
16 typical of The Class.

17 33. Plaintiff will fairly and adequately protect the interests of the members
18 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
19 class actions.

20 34. A class action is superior to other available methods of fair and
21 efficient adjudication of this controversy, since individual litigation of the claims
22 of all Class members is impracticable. Even if every Class member could afford
23 individual litigation, the court system could not. It would be unduly burdensome
24 to the courts in which individual litigation of numerous issues would proceed.
25 Individualized litigation would also present the potential for varying, inconsistent,
26 or contradictory judgments and would magnify the delay and expense to all parties
27 and to the court system resulting from multiple trials of the same complex factual
28 issues. By contrast, the conduct of this action as a class action presents fewer

1 management difficulties, conserves the resources of the parties and of the court
2 system, and protects the rights of each Class member.

3 35. The prosecution of separate actions by individual Class members
4 would create a risk of adjudications with respect to them that would, as a practical
5 matter, be dispositive of the interests of the other Class members not parties to such
6 adjudications or that would substantially impair or impede the ability of such non-
7 party Class members to protect their interests.

8 36. Defendant has acted or refused to act in respects generally applicable
9 to The Class, thereby making appropriate final and injunctive relief with regard to
10 the members of The Class as a whole.

11 **FIRST CAUSE OF ACTION**

12 **Negligent Violations of the Telephone Consumer Protection Act**

13 **47 U.S.C. §227 et seq.**

14 **By Plaintiff and The Class Against Defendant**

15 37. Plaintiff repeats and incorporates by reference into this cause of
16 action the allegations set forth above at Paragraphs 1-36.

17 38. The foregoing acts and omissions of Defendant constitute numerous
18 and multiple negligent violations of the TCPA, including but not limited to each
19 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

20 39. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
21 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
22 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

23 40. Plaintiff and the Class members are also entitled to and seek
24 injunctive relief prohibiting such conduct in the future.

25 ///

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

By Plaintiff and The Class Against Defendant

41. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-36.

42. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

43. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

44. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Violations of the Rosenthal Fair Debt Collection Practices Act

Cal. Civ. Code § 1788 et seq.

By Plaintiff, Individually, Against Defendant

45. Plaintiff repeats and reincorporates by reference into this cause of action allegations set forth above at paragraphs 1-25.

46. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully.

111

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Violations of the Rosenthal Fair Debt Collection Practices Act

Cal. Civ. Code § 1788 et seq.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendant for the following:

- 1 A. Actual damages;
- 2 B. Statutory damages for willful and negligent violations;
- 3 C. Costs and reasonable attorney's fees;
- 4 D. For such other and further relief as may be just and proper.

5 **TRIAL BY JURY**

6 47. Pursuant to the seventh amendment to the Constitution of the United
7 States of America, Plaintiff is entitled to, and demands, a trial by jury.
8

9 Respectfully submitted this 10th Day of April, 2018.
10
11

12 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
13

14 By: /s/ Todd M. Friedman
15 Todd M. Friedman
16 Law Offices of Todd M. Friedman
17 Attorney for Plaintiff
18
19
20
21
22
23
24
25
26
27
28